IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1610 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BLINDMEN'S ASSOCIATION - Petitioner(s)
Versus
MAFATLAL M PATEL AGED ABOUT 45 YRS. - Respondent(s)

==========

Appearance :
MR VM PANCHOLI for Petitioner
MR AK CLERK with MR MAHENDRA K PATEL for Respondent

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/08/2007

ORAL JUDGMENT

1. Shri V.M.Pancholi, learned counsel for the petitioner; Shri A.K. Clerk, with Shri Mahendra K Patel, learned counsel for the respondent.

2. The petitioner Society, being aggrieved by the award dated 19.5.2000 passed by the learned Labour Court, Ahmedabad, in Reference [LCA] No. 728 of 1988, is before this Court under Article 227 of the Constitution of India, with a submission that the Court below erred in directing reinstatement of the respondent with 100% back wages and benefits of continuity of service.

3. The short facts necessary for disposal of the present writ application are that the present workman, as alleged, tendered his resignation on 30.11.87 in view of his involvement in stealthily selling certain raw material used for making incense sticks. The resignation was accepted on 1.12.87. Almost after about 9 days of the acceptance of the resignation, the workman started writing to the petitioner Society that the resignation was obtained under pressure, coercion and duress and as such, the resignation was not binding against his interest. It also appears that in view of the criminal activity in which the workman was

involved, he was ordered to be prosecuted.

4. The workman obtained a Reference. It is to be seen that during pendency of the Reference, the respondent workman was acquitted by the learned Metropolitan Magistrate Court No.20, Ahmedabad, on 14.10.93 in Criminal Case No. 149/87.

5. The workman submitted before the Labour Court that the resignation was obtained under duress and coercion or by exercising undue pressure upon him, therefore, acceptance of the resignation on 1.12.87 was patently illegal. The petitioner society, on notice, appeared before the learned Labour Court and submitted that the resignation was voluntary, it was accepted on 1.12.87 and there was no reason for the petitioner society to obtain the resignation under duress; that the workman after finding that he was in soup and was caught red-handed in stealthily selling the raw material, to save his position and reputation, he had voluntarily tendered the resignation.

6. The parties led evidence. After hearing the parties, the learned Labour Court, after taking

into consideration the fact of acquittal of the respondent observed that the resignation was not voluntary; present petitioner-employer could not accept the resignation. The learned Labour Court accordingly granted reliefs referred to above in favour of the workman.

7. Shri V.M. Pancholi, learned counsel for the petitioner, taking me through the judgment delivered in the Criminal Case No. 143/97, submitted that the scope of two proceedings was totally different; that the learned Labour Court erred in relying upon the observations made by the learned Criminal Court. He also submitted that unless motives were attributed against the present petitioner or certain enmity etc. were pleaded, the Court below could not hold that the resignation was obtained after exercising undue pressure. He submitted that in absence of any good reason to remove the workman, there was no ground available to the petitioner to remove the respondent from service. He also submitted that the learned Court below erred in holding that the resignation was not voluntary and also erred

in directing re-instatement of the workman with 100% back wages.

8. Shri A.K. Clerk, learned counsel for the respondent, however, submitted that the learned Labour Court has not relied upon the observations made by the Criminal Court but has simply referred to the observations which led to the acquittal. He submitted that the once the Labour Court, after due appreciation of the evidence recorded a finding that the resignation was not voluntary, there is no scope for interference in a petition under Article 227 of the Constitution.

9. It is not in dispute before me that the respondent-workman was working with the present petitioner as a Field Worker with effect from 1.1.81. It is not the case of the present respondent that prior to 30.11.87, that is, in a period of six years and ten months, any mishap had taken place or any action was taken by the management to terminate the workman or remove him from the job.

10. On 30.11.87, the respondent, as alleged, had

tendered his resignation which was accepted on 1.12.87. In the letter dated 9.12.87, as submitted by Shri Clerk, learned counsel for the respondent, the workman had narrated the reasons which were behind the alleged letter of resignation. Shri Clerk also submitted that this letter was marked as “Exhibit” and contents of the letter have not been denied by the other side by examining any witness. Shri Pancholi, learned counsel for the petitioner, however, submitted that though appropriate opportunity was given to the present petitioner but later on, realizing that they were required to lead oral evidence, they filed an affidavit of one Shri Panchal against whom certain allegations were made in the letter dated 9.12.87 and prayed for some opportunity to lead evidence, but the said application came to be rejected by the learned Labour Court. Shri Pancholi further submitted that production of a document would not be a proof of the contents of the document. According to him, the contents of the letter dated 9.12.87 have not been proved nor it was

ever pleaded or ever proved by leading reliable evidence that for any particular reason, the present petitioner wanted to terminate the services of the respondent.

11. True it is that the respondent has been acquitted by the Criminal Court but acquittal by a Criminal Court would not have any binding effect on a Civil Court or a Labour Court. Before the Criminal Court, a complainant is required to bring the guilt home by leading evidence which proves the guilt beyond shadow of doubt or to such reasonable extent that no other view except guilt of the accused is possible. In a civil matter which would certainly include the labour matter, a party is required to prove the case on strength of preponderance of probabilities. In a given case, despite acquittal, Civil Court may still hold that the departmental inquiry was not illegal, resignation tendered was voluntary and that the department/employer was justified in removing the workman from the services or in accepting his resignation. When an allegation is made or

any insinuations are made against a particular officer and such statements are in a letter then, production of the letter would not amount to proof of the allegations. Writing of such letter under the hands of the present respondent is not a fact in dispute. The dispute is that no motives were attributed nor any evidence was led to prove that for certain ulterior motives or to take some revenge for one reason or the other, or acting in extra high-handed manner, the workman came to be removed from the services. The fact of the letter dated 9.12.87 written by the workman is not in dispute but the fact would still remain that who proves the contents of the letter dated 9.12.87. The allegations contained in the letter would remain the allegations and would not become evidence on which certain reliance can be placed.

12. Shri Clerk, after taking me through the statement of the respondent, however, submitted that he had clearly stated that Shri Panchal and his colleague, after intimidating the respondent had obtained the resignation. This statement

of the respondent would not be sufficient to prove the motives. The respondent nowhere said that Shri Panchal, prior to 1.12.87 or prior to 30.11.87, ever acted in high-handed manner or acted with mala fides or to achieve his ulterior motives, ever took any action against the respondent-workman.

13. The Court below, in the considered opinion of this Court, erred in relying upon the allegations made in the letter dated 9.12.87 less appreciating that the contents of the letter were not proved. The contents of the letter dated 9.12.87 remain simple allegations in absence of oral evidence.

14. Even if the present petitioner did not lead any evidence, then too, the present workman was required to prove his case. In absence of the present petitioner, that too, for any justifiable reason, the Court could take the petition to be exparte but even in an exparte case, plaintiff or applicant is required to prove his case to certain extent so that the Court dealing with the case feels satisfied and

grants relief. In the present matter, unfortunately, the present respondent did not lead sufficient evidence to prove ulterior motive or reasons which persuaded the establishment/employer to remove the respondent from his job.

15. Even otherwise, it is to be seen that the Court below has not recorded any finding that, to achieve certain ulterior motive, such action was taken against the respondent. The Court below had simply considered the consequences without taking into consideration the cause.

16. In view of the discussion aforesaid, I could certainly allow the petition in toto and dismiss the Reference but taking into consideration that the question of employment of the workman is involved, after setting aside the award made by the Court below, I remand the matter back to the learned Court below with permission to the parties to amend their pleadings and lead further evidence if they so desire.

17. The award made by the learned Court below is hereby set aside and quashed. The parties

present in the Court shall appear before the learned Labour Court on 15th October, 2007. It shall be the duty of the parties to file copy of this judgment before the learned Labour Court enabling it to know as to what it is required to do in the matter. It is expected of the learned Labour Court that within a period of ten months, it shall finally decide the Reference.

18. The petition is allowed in the above terms. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

pirzada/-